

BALL JANIK LLP

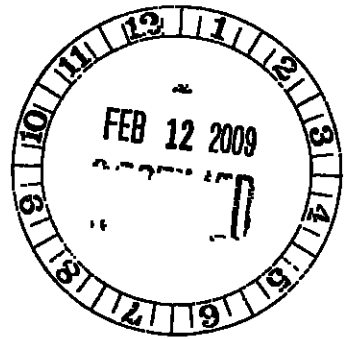
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KARI MORELL



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February 12, 2009

224518

BY HAND DELIVERY

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-001

Re STB Docket No. AB-6 (Sub-No. 466X), BNSF Railway Company –
Discontinuance Of Trackage Rights Exemption – In Kootenai
County, ID

Dear Acting Secretary Quinlan:

Attached for filing are the original and ten copies of a Petition for
Exemption under 49 U.S.C. § 10502. Also attached is a check covering the \$6,300
filing fee.

Please time and date stamp the extra copy of the Petition and return it
with our messenger.

If you have any questions, please call me.

Sincerely,

Karl Morell

FEE RECEIVED

FEB 12 2009

ENCLOSURES
SURFACE
TRANSPORTATION BOARD

FILED

FEB 12 2009

SURFACE
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ENTERED
Office of Proceedings

FEB 12 2009

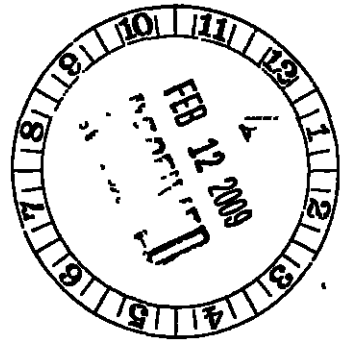
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-6 (SUB-NO 466X)

BNSF RAILWAY COMPANY
-- DISCONTINUANCE OF TRackage RIGHTS EXEMPTION --
IN KOOTENAI COUNTY, IDAHO

PETITION FOR EXEMPTION



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Attorneys for
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Dated February 12, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-6 (SUB-NO 466X)

BNSF RAILWAY COMPANY
-- DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION --
IN KOOTENAI COUNTY, IDAHO

PETITION FOR EXEMPTION

BNSF Railway Company ("BNSF") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, BNSF's discontinuance of trackage rights over a 139-mile rail line owned by Union Pacific Railroad Company ("UP") and located in Kootenai County, Idaho

PROPOSED TRANSACTION

BNSF proposes to discontinue its trackage rights over the UP rail line located between milepost 7.40, at Gibb, ID, and milepost 8.79, at Coeur d'Alene, in Kootenai County, Idaho (the "Line"). The Line traverses U.S. Postal Service Zip Code 83814. No stations will be closed as a result of the discontinuance of trackage rights. A map of the Line is attached as Exhibit A.

Based on information in BNSF's possession, the Line does not contain any federally granted right-of-way. Any documentation in BNSF's possession will be made available to those requesting it.

STATEMENT OF FACTS

BNSF acquired the trackage rights in 2003. *See* STB Finance Docket No 34436, *The Burlington Northern and Santa Fe Railway Company – Trackage Rights Exemption – Union Pacific Railroad Company* (not printed), served December 24, 2003 Pursuant to a trackage rights Agreement dated October 23, 2003, UP agreed to grant BNSF trackage rights over the Line The purpose of the trackage rights was to enable BNSF to provide contractual haulage services for UP between Spokane, Washington and Coeur d'Alene, Idaho for traffic originating at or destined to the Stimson Lumber facility at Coeur d'Alene

The only customer BNSF served via the Line was the Stimson Lumber Company ("Stimson") whose DeArmond Stud Mill was located on the Line The last Stimson shipments moving over the Line occurred in May 2008, when the Stimson Mill ceased operations That facility is currently being dismantled and converted to non-industrial uses In light of the closing of the Stimson Mill, UP filed its Petition for Exemption, in STB Docket No AB-33 (Sub-No. 272X), on January 14, 2009, seeking to abandon the portion of the Line located between milepost 7.5 and milepost 8.79

EXEMPTION REQUESTED

A rail carrier may not discontinue trackage rights operations without the prior approval of the Board 49 U.S.C. § 10903(d), *see also Thompson v Texas Mexican Ry Co*, 328 U.S. 134 (1946)

Under 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation when it finds that:

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101, and

(2) either

(a) the transaction is of limited scope, or

(b) regulation is not necessary to protect shippers from the abuse of market

power

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the STB's predecessor to liberally use the expanded exemption authority under former Section 10505.

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation – Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds. Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application Of 49 U.S.C. § 10903 Is Not Necessary to Carry Out The Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal discontinuance application and expedite regulatory decisions [49 U S C § 10101(2)]. *See, e g , Norfolk & W Ry Co – Abandonment Exem – Cinn , Hamilton County, OH*, 3 S T B. 110 (1998), STB Docket No AB-367 (Sub-No 2X), *Georgia Central Railroad, L P – Abandonment Exemption – In Chatham County, GA* (not printed), served September 17, 1997 (“*Georgia Central*”). There is no longer any traffic moving over the Line Consequently, UP seeks to abandon the Line so that it may use the assets of the Line elsewhere on its network. Granting the exemption will thus foster sound economic conditions and encourage efficient management 49 U S C § 10101(5) and (9) *See, e g .* STB Docket No AB-318 (Sub-No 4X), *Louisiana & Delta Railroad, Inc – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997; STB Docket No AB-497 (Sub-No 1X), *Minnesota Northern Railroad, Inc – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997 Other aspects of the rail transportation policy are not affected adversely. For example, competition and the continuation of a sound rail transportation system are not affected since there are no longer any shippers on the Line.

B. This Transaction Is Of Limited Scope

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume *See, e g .* Docket No AB-347 (Sub-No. 1X), *Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL* (not printed), served January 16, 1992, Docket No. AB-6 (Sub-No. 349X), *Burlington Northern Railroad Company –*

Abandonment Exemption – In Greene and Polk Counties, MO (not printed), served August 27, 1993.

The proposed transaction is clearly of limited scope. BNSF is seeking to discontinue trackage rights over a 1.39-mile rail line. Moreover, there are no longer any active rail shippers located on the Line. The shortness of the Line, the limited geographic area involved, and the lack of rail service on the Line demonstrate the limited scope of the proposed discontinuance. *See, e.g.,* Docket No. AB-397 (Sub-No. 3X), *Tulare Valley Railroad Company – Abandonment Exemption – In Tulare And Fresno Counties, CA* (not printed), served February 9, 1995, Finance Docket No. 31088 and Docket No. AB-43 (Sub-No. 148X), *Southern Ry. Co. and Norfolk Southern Corp. – Purchase – Illinois Central R. Co. Line between Fulton, KY and Haleyville, AL – And Trackage Rights – Illinois Central R. Co. Line between Fulton, KY and Centralia, IL* (not printed), served May 9, 1988.

C. This Transaction Will Not Result In An Abuse of Market Power

The proposed discontinuance will not reduce the number of competitive rail options available to any shipper, since there no longer are any shippers located on the Line. Also, the Line is stub-ended and not capable of handling overhead traffic. Therefore, regulation is not necessary to protect shippers from an abuse of market power. *See, e.g.,* STB Docket No. AB-55 (Sub-No. 576) *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999, STB Docket No. AB-55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*

The proposed discontinuance poses no threat of market power abuse by BNSF or any other carrier. *See, e.g.,* Docket No. AB-6 (Sub-No. 302X), *Burlington Northern R. – Trackage*

Rights Termination and Discontinuance of Operations Exemption – In Tulsa, Wagoner, and Muskogee Counties, OK (not printed), served December 21, 1988

ENVIRONMENTAL AND HISTORIC REPORTING REQUIREMENTS

This proceeding is exempt from environmental reporting requirements under 49 C F R § 1105 6(c)(6) (discontinuance of trackage rights where the line will continue to be operated) and from historic reporting requirements under 49 C F R § 1105 8(a) (because exempted by 49 C.F.R. § 1105 6(c)(6)) See STB Docket No. AB-156 (Sub-No 25X), *Delaware and Hudson Railway Company, Inc – Discontinuance of Trackage Rights – In Susquehanna County, Pa and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie, and Genesee Counties, NY* (not printed), served January 19, 2005. In any event, UP has fully complied with all applicable environmental and historic requirements in STB Docket No. AB-33 (Sub-No. 272X), and, to the extent deemed necessary, BNSF adopts the UP Environmental and Historic Reports filed with the Board on October 30, 2008

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached to this Petition as Exhibit B

LABOR PROTECTION

The interests of railroad employees who may be adversely affected by the proposed discontinuance will be adequately protected by the labor protection conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I C C 91 (1979)

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously described in this Petition. Nor is STB regulation required to protect shippers from the abuse of market power. Moreover, the proposed discontinuance is of limited scope. Accordingly, BNSF respectfully urges the Board to grant the discontinuance

Respectfully submitted,

Kristy D. Clark
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BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, TX 78131



Karl Morell
Of Counsel
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Dated February 12, 2009

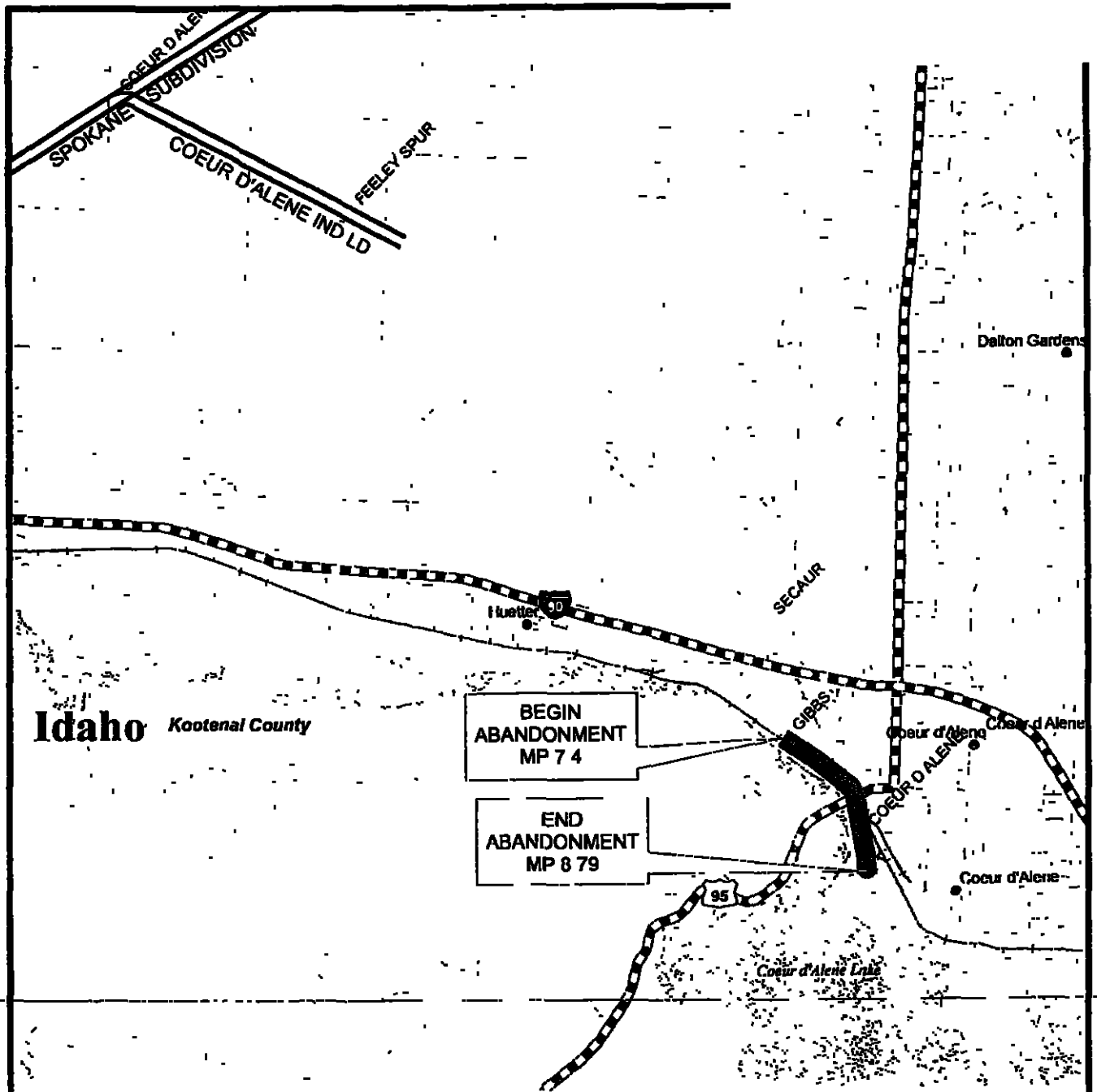
EXHIBIT A

EXHIBIT B

SURFACE TRANSPORTATION BOARD

STB DOCKET NO AB-6 (Sub-No 466X)

**BNSF RAILWAY COMPANY
--DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION--
IN KOOTENAI COUNTY, IDAHO**

On February 12, 2009, BNSF Railway Company (BNSF) filed with the Surface Transportation Board (Board) a petition, under 49 U S C 10502, for exemption from the provisions of 49 U S C 10903 for BNSF to discontinue trackage rights over approximately 1 39 miles of railroad line owned by Union Pacific Railroad Company located between milepost 7 40, at Gibb, ID, and milepost 8 79, at Coeur d'Alene, ID The line traverses U S Postal Service Zip Code 83814 in Kootenai County, Idaho.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R Co - Abandonment - Goshen, 360 I C C 91 (1979)

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U S C 10502(b) A final decision will be issued by _____, 2009

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105 8(b)

Any offer of financial assistance for subsidy under 49 C F R. 1152 27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,500 *See* 49 C F R 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket No AB-6 (Sub-No 466X) and must be sent to (1) Office of the Secretary, Case Control Unit, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, N W., Suite 225, Washington, DC 20005. Replies to the petition are due on or before _____, 2009

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 245-0230 or refer to the full discontinuance regulations at 49 C F R Part 1152 Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis at (202) 245-0305 [TDD for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our website at "WWW STB DOT GOV "

Decided: _____ 2009

By the Board, David M Konschnik, Director, Office of Proceedings,

CERTIFICATE OF SERVICE

I hereby certify that, on this 12th day of February, 2009, I served the foregoing Petition for Exemption to be served by first class mail, postage pre-paid on the following parties:

State Public Service Commission Idaho Public Utilities Commission P O. Box 83720 Boise, ID 83720-0074	National Park Service Chief of National Recreation and Trails U S. Dept of Interior - Nat'l. Park Service Recreation Resources Assistance Division 1849 C Street, NW Washington, DC 20240-0001
Military Traffic Management Command MTMCTEA ATTN: SDTE-SA Railroads for National Defense 709 Ward Drive, Building 1990 Scott AFB, IL 62225-5357	National Park Service National Park Service 1111 Jackson Street Suite 700 Oakland, CA 94607
Stimson Lumber Company Stimson Lumber Company 520 South West Yamhill Street Suite 700 Portland, Oregon 97204	U.S. Department of Agriculture U S Department of Agriculture Chief of the Forest Service 4th Floor N.W., Auditors' Building 14th St and Independence Ave , S W Washington, DC 20250


Karl Morell

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed discontinuance in STB Docket No AB-6 (Sub-No 466X) was published on February 5, 2009, in the Coeur d'Alene Press, a newspaper of general circulation in Kootenai County, Idaho as required by 49 C.F.R § 1105.12

Dated. February 12, 2009


Karl Morell